

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILLIP A. BROWN II, # 271566,

Petitioner,

v.

Case Number: 09-CV-14850
Honorable Patrick J. Duggan

CINDI CURTIN,

Respondent.

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**ORDER DENYING PETITIONER'S MOTION FOR CERTIFICATE OF
APPEALABILITY**

This matter is presently before the Court on Petitioner's motion for a certificate of appealability, filed June 30, 2011. Petitioner seeks a certificate of appealability in order to appeal this Court's April 15, 2011 decision denying without prejudice his motion to add respondent and the Court's June 1, 2011 decision denying his subsequent motion for reconsideration. In those motions, Petitioner sought to amend the case caption to reflect that his current custodian is David Bergh, Warden of the Thumb Correctional Facility. Because Petitioner's case is stayed due to continuing state-court matters, this Court concluded that it is unnecessary to amend the case caption at this time.

28 U.S.C. § 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). When a district court denies habeas relief on procedural grounds without reaching the petitioner's constitutional claims, a certificate may issue if the petitioner shows that jurists of reason would find it debatable whether (1) the petition states a valid claim of a denial of a constitutional right; *and* (2) the district court was correct in its

procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484-85, 120 S. Ct. 1595, 1604 (2000). This Court does not believe that jurists of reason would find its procedural ruling incorrect.

Accordingly,

IT IS ORDERED, that Petitioner's motion for a certificate of appealability is

DENIED.

Date: July 20, 2011

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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AAG Raina I. Korbakis